

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

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)
Computer III Further Remand)
Proceedings: Bell Operating Company)
Provision of Enhanced Services)

CC Docket No. 95-20

)
)
1998 Biennial Regulatory Review --)
Review of *Computer III* and ONA)
Safeguards and Requirements)

CC Docket No. 98-10

**COMMENTS OF THE
AD HOC TELECOMMUNICATIONS
USERS COMMITTEE**

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SUMMARY

To increase competition and encourage the proliferation of new services that respond to market demands, network features and functionalities should be available to non-carriers.

Neither the Telecommunications Act of 1996 nor ensuing regulatory, technological, or marketplace developments warrant modification or elimination of the Open Network Architecture ("ONA") or Comparably Efficient Interconnection ("CEI") rules or other nonstructural safeguards. The Bell Operating Companies ("BOCs") still control bottleneck facilities that non-carriers need to provide services for themselves or others. While limited competition has begun to emerge, it has been primarily in niche markets, and, according to the Commission, the BOCs still command overwhelming market shares within their regions. Moreover, the tremendous growth among information service providers ("ISPs") is insufficient to quell the threat of anticompetitive activity by the BOCs. Thus, safeguards remain necessary to protect the public interest.

The ONA rules are one example of such a safeguard, although they are flawed and have proven ineffective. In *California v. FCC*, the Court of Appeals for the Ninth Circuit criticized the Commission for retreating from its earlier commitment to fundamental unbundling of network elements. The Commission can correct this mistake in this proceeding by extending fundamental unbundling of network features and functionalities to non-carriers.

For a variety of reasons, implementation of Section 251 of the Communications Act has not alleviated the Ninth Circuit's concerns regarding the

level of unbundling under ONA. Among other things, Section 251-like UNEs are available only to carriers, not users. Moreover, incumbent carriers are not required to re-assemble UNEs and can price such re-assembly anticompetitively.

As the Ninth Circuit recognized, the ONA rules do not go far enough. Users need access to fundamentally unbundled features and functionalities to provide an effective curb on BOC market power and to be able to identify and satisfy market demands. Users should not be required to partner with CLECs or to become carriers to take advantage of Section 251-like unbundling.

A BOC that objects to providing a requested feature or functionality should be required to demonstrate that compliance with the request would be technically and financially infeasible, using procedures similar to those adopted in *Computer III*. Absent a persuasive showing, the BOC should be required to provide the requested feature or functionality.

A line of Commission precedent supports giving users access to the network for any use that is privately beneficial without being publicly detrimental, *i.e.*, without causing technical harm to the network. The access proposed herein would satisfy this standard.

As a general matter, the Commission's focus in this proceeding should be more on users and less on carriers. Experience shows that market needs are best identified and met when users are given access to the network comparable to that afforded carriers. The Commission should therefore give non-carriers access to unbundled network features and functionalities.

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The Ad Hoc Telecommunications Users Committee ("Ad Hoc" or the "Ad Hoc Committee") submits these Comments in response to the Commission's Further Notice of Proposed Rulemaking ("Further Notice") in the referenced proceeding.¹ As explained below, non-carriers should have access to unbundled network elements ("UNEs") for use in providing interstate services to the same extent that they are available to carriers under Section 251 of the Communications Act.²

¹ *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services*, CC Docket No. 95-20, and *1998 Biennial Regulatory Review -- Review of Computer III Safeguards and Requirements*, CC Docket No. 98-10, Further Notice of Proposed Rulemaking, FCC 98-8 (released January 30, 1998).

² 47 U.S.C. § 251.

INTRODUCTION

The Ad Hoc Committee represents some of the country's largest users of basic telecommunications services and information services. Because of the considerable volume of services they purchase, and the importance such services play in their daily business operations, Ad Hoc's members have a keen interest in regulatory policies that promote competitive entry by new service providers, and encourage the proliferation of new services at competitive rates. In addition, the Ad Hoc Committee has consistently advocated giving users of telecommunications and information services the widest choice of options and competitive alternatives for the provision of network facilities and functionalities. Experience has shown that competition is critical to the identification of users' needs and the introduction of products and services that respond to those needs. The recommendations set forth below are consistent with these fundamental positions.

DISCUSSION

I. **NEITHER THE TELECOMMUNICATIONS ACT OF 1996 NOR
SUBSEQUENT REGULATORY, TECHNOLOGICAL OR MARKETPLACE
DEVELOPMENTS JUSTIFY ELIMINATION OF THE ONA AND CEI
RULES.**

The Commission has asked whether the 1996 Telecommunications Act³ or subsequent regulatory, technological, or marketplace developments warrant elimination or modification of the Open Network Architecture ("ONA") or Comparably Efficient Interconnection ("CEI") rules or the Commission's other

³ Pub. L. No. 104-104, 110 Stat. 56 (1996) (the "1996 Act").

nonstructural safeguards governing the provision of intraLATA information services by the Bell Operating Companies ("BOCs").⁴ As a general matter, neither the 1996 Act nor any ensuing developments lessen the importance of the kind of fundamental unbundling of network functionalities that should be available, but is not, through ONA and CEI. Safeguards are at least as important now as they were prior to passage of the Telecommunications Act of 1996.

A. Neither Access Competition Nor the Growth of the ISP Industry Is Sufficient to Curb BOC Anticompetitive Activity.

The BOCs still control bottleneck facilities that information service providers ("ISPs") need to provide their services, and, while limited competition is emerging in the local exchange and interstate access markets, it has hardly reached a level sufficient to restrain anticompetitive conduct by the BOCs.

Although tremendous growth has occurred in information services markets, particularly with respect to Internet-based services, the existence of numerous ISPs does not indicate the presence of effective competition in the provision of interstate access service. Nor does the proliferation of ISPs diminish the threat of anticompetitive conduct by the BOCs in their provision of interstate access. As long as the BOCs retain their control over bottleneck facilities, the public interest needs protection through safeguards.

⁴ Further Notice at ¶¶ 5-7. The BOCs' provision of some *interLATA* information services within their regions is governed by Sections 260, 272, 274 and 275 of the Communications Act, 47 U.S.C. §§ 260, 272, 274, 275.

In the Further Notice, the Commission admits that "BOCs remain the dominant providers of local exchange and exchange access services in their in-region states, and thus continue to have the ability and incentive to engage in anticompetitive behavior against competing ISPs."⁵ And only 15 months ago, the Commission observed that, although the growth of competitive access providers ("CAPs") was high, "their share of the overall end market is small and is the key factor."⁶ Little has changed with respect to interstate access competition in the short time since the Commission made those findings.

As the Commission has acknowledged, "Congress recognized, in passing the 1996 Act, that competition will not immediately supplant monopolies"⁷ For this reason, the Commission said, Congress imposed a series of safeguards designed to prevent the BOCs from using their market power to, among other things, cross-subsidize and discriminate in their provision of interLATA information services.⁸

In the Further Notice, the Commission explains the potential for anticompetitive conduct by the BOCs:⁹

⁵ Further Notice at ¶ 51 (footnote omitted). The Commission noted that the BOCs account for approximately 99.1 percent of the local service revenues in their markets. *Id.* at note 151.

⁶ *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905 (released December 24, 1996) ("*Non-Accounting Safeguards Order*") at 21912, n.19.

⁷ Further Notice at ¶ 5.

⁸ *Id.*

⁹ Further Notice at ¶ 43.

Because the BOCs control the local exchange network and the provision of basic services, in the absence of regulatory safeguards they may have the incentive and ability to engage in anticompetitive behavior against ISPs that must obtain basic network services from the BOCs in order to provide their information service offerings. For example, BOCs may discriminate against competing ISPs by denying them access to services and facilities or by providing ISPs with access to services and facilities that is inferior to that provided to the BOCs' own information services operations. BOCs also may allocate costs improperly by shifting costs they incur in providing information services, which are not regulated under Title II of the Act, to their basic services.

The only protections ISPs have against this type of anticompetitive activity by the BOCs are safeguards mandated and enforced by the Commission. The interconnection and unbundling requirements imposed by existing *Computer III* and ONA rules are consistent with the 1996 Act, as the Commission has concluded, and even a majority of the BOCs that participated in the *Non-Accounting Safeguards* proceeding¹⁰ reportedly conceded.

B. Implementation of Section 251 Has Not Alleviated the Ninth Circuit's Concerns Regarding the Level of Unbundling Under ONA.

The Commission has asked whether implementation of the local competition requirements of Section 251 of the Communications Act¹¹ has alleviated concerns expressed by the Court of Appeals for the Ninth Circuit that the level of unbundling required by ONA was insufficient.¹² It has not.

¹⁰ *Non-Accounting Safeguards Order*, *supra*, note 6, 11 FCC Rcd at 21968-69.

¹¹ 47 U.S.C. § 251.

¹² Further Notice at ¶¶ 7, 29.

In *California v. FCC*,¹³ the Ninth Circuit criticized the Commission for retreating from its previous commitment to fundamental unbundling. The Court cited anecdotal evidence "that shows that the BOCs have the incentive to discriminate and the ability to exploit their monopoly control over the local networks to frustrate regulators' attempts to prevent anticompetitive behavior."¹⁴

The Court explained that fundamental unbundling under ONA is critical to curbing BOC abuses of market power: "[W]here a BOC is providing its own enhanced service," the CEI rules and nondiscrimination reporting requirements

do not enable enhanced service providers to pick and choose network service elements to design and develop enhanced services. Consequently, competitors who otherwise would be able to compete effectively by offering more efficient packages of services had fundamental unbundling been accomplished might be excluded from the market entirely. Further, the network disclosure rules do not guarantee that the BOCs will provide competitors with the interconnection they need for their enhanced services.^[15]

The same concerns the Court expressed four years ago remain valid today, and the implementation of Section 251 has not ameliorated these concerns one iota. Indeed, only 15 months ago, the Commission acknowledged that Section 251 had not eliminated the need for the ONA and CEI rules or other

¹³ 39 F.3d 919 (9th Cir. 1994) ("*California III*") at 929-30.

¹⁴ *Id.* at 929.

¹⁵ *Id.* at 929-30.

nonstructural safeguards. In the *Non-Accounting Safeguards Order*,¹⁶ the Commission stated that, as of that time,

the Commission's *Computer II*, *Computer III*, and *ONA* rules are the only regulatory means by which certain independent ISPs are guaranteed nondiscriminatory access to BOC local exchange services used in the provision of intraLATA information services. . . . ISPs that are not telecommunications carriers cannot obtain interconnection or access to unbundled elements under section 251. Thus, we believe that continued enforcement of these safeguards is necessary pending the conclusion of the *Computer III Further Remand Proceedings* and [that such enforcement] establishes important protections for small ISPs that are not provided elsewhere in the Act.

Section 251 has not alleviated the Ninth Circuit's concerns for a number of reasons. First, Section 251 applies only to "requesting telecommunications carriers," not to users.¹⁷ The Commission has held that an ISP that is not also a carrier may not purchase UNEs for use in providing information services, although an ISP that is also a carrier may.¹⁸ As the Ninth Circuit observed in *California III*, ISPs require access to fundamentally unbundled network functionalities to be able to compete effectively with the ILEC affiliate in the provision of information services.

¹⁶ *Non-Accounting Safeguards Order*, *supra*, note 6, 11 FCC Rcd at 21970-71 (footnotes omitted).

¹⁷ 47 U.S.C. § 251(c)(2), (c)(3); see Further Notice at ¶ 32; *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499 (1996) (subsequent history omitted) ("*Local Competition Order*") at 15988-90.

¹⁸ *Local Competition Order*, *supra*, note 17, 11 FCC Rcd at 15988-90.

Second, even if Section 251 made UNEs available to ISPs, under a recent decision by the Court of Appeals for the Eighth Circuit, the incumbent local exchange carriers ("ILECs") are not required to re-assemble UNEs.¹⁹ ILECs can price such re-assembly anticompetitively and uneconomically.

Third, the FCC's implementation of Section 251 UNEs has required the end-to-end integration of the potentially competitive ISP inter-office access service and the ILECs' monopolized local service to end users. The effect is that ILECs can use their control of local service and facilities to bundle and monopolize upstream access and backbone services facilities.

Fourth, although implementation of Section 251 has resulted in the limited emergence of nascent competition in the local exchange and exchange access markets, as noted above, most competitive entry under Section 251 has been in niche markets. The Eighth Circuit's decision on re-assembly of UNEs would effectively require CLECs to physically collocate in each serving central office and provide bundled end-to-end service, and thus ensures continued control of the local market by the ILECs. Thus, to date, Section 251 has not yielded, and potentially may never yield, the level of competition that the Section 251 drafters intended.

Although the Commission cannot exercise jurisdiction that the Eighth Circuit has ruled it does not have, the Commission's jurisdiction over interstate services is not in question. Within that jurisdiction, the Commission should (1)

¹⁹ *Iowa Utilities Board v. FCC*, Nos. 96-3321, *et al.*, slip op. (8th Cir. filed October 14, 1997) (subsequent history omitted) at 2-3.

retain the ONA-like requirement to provide unbundled features and functionalities on a non-discriminatory basis, and (2) require ILECs to make unbundled functionalities and service arrangements available to providers of interstate access services, and not require those such providers to offer local exchange service as a condition to having access to such unbundled network functionalities and service arrangements.

II. USERS THAT ARE NOT ALSO CARRIERS SHOULD HAVE THE ACCESS TO UNES, AND THE COMMISSION SHOULD EXTEND SECTION 251-LIKE ACCESS TO NETWORK ELEMENTS TO SUCH USERS FOR THE PROVISION OF INTERSTATE SERVICES.

The Commission has asked whether it should extend to ISPs some or all unbundling rights conferred by Section 251 of the Act, which it has previously concluded were not statutorily required for users.²⁰ The answer to this is an emphatic Yes.

A. The ONA Rules Have Historically Been Ineffective Because They Do Not Go Far Enough.

It is widely recognized that the ONA rules have proven ineffective at accomplishing the goals for which they were intended. The primary failing of those rules, as the Ninth Circuit recognized in *California III*, and as several commenters in the BOC ONA proceeding²¹ asserted, is that their unbundling requirements are inadequate. Arguing that the ONA unbundling requirements

²⁰ Further Notice at ¶¶ 7, 94, 96.

²¹ *Filing and Review of Open Network Architecture Plans*, 4 FCC Rcd 1 (1988) ("BOC ONA Order") (subsequent history omitted) at 37-41; see Further Notice at ¶ 27 & nn. 82-85.

failed to "disaggregate communications facilities and services on an element-by-element basis," certain commenters in the BOC ONA proceeding urged the Commission to adopt a more "fundamental" approach to unbundling wherein basic service arrangements ("BSAs") would be further unbundled so as to allow enhanced service providers ("ESPs") to interconnect their own trunks with BOC switches.²²

Although the Commission rejected the more fundamental approach to unbundling (and thereby incurred the Ninth Circuit's eventual disapproval), it acknowledged that "such unbundling, in the long run, might have pro-competitive effects as technology and regulatory policies evolve"²³ The time has come for the Commission to correct the mistakes it made with ONA.

B. The ONA Rules Should be Expanded to Incorporate At Least Section 251-Like Unbundling for Interstate Access.

The Commission is correct in observing that Section 251 UNEs are substantially equivalent to the network elements certain parties had unsuccessfully proposed be subject to fundamental unbundling under ONA.²⁴ At the same time, Section 251-type access has distinct advantages over ONA access, as the Commission has explained:²⁵

We recognize . . . that section 251 provides a level of unbundling that pure ISPs do not receive under the

²² Further Notice at ¶ 27 (quoting *BOC ONA Order*, *supra*, note 21 4 FCC Rcd at 37).

²³ Further Notice at n.87 (citing *BOC ONA Order*, *supra*, note 21 4 FCC Rcd at 43).

²⁴ Further Notice at ¶ 31.

²⁵ *Id.* at ¶ 93 (footnotes omitted).

Commission's current ONA framework. Unbundling under section 251 includes the physical facilities of the network, together with the features, functions, and capabilities associated with those facilities. Section 251 also requires incumbent LECs to provide for the collocation at the [LECs'] premises of equipment necessary for interconnection or access to unbundled network elements, under certain conditions. Unbundling under ONA, in contrast, emphasizes the unbundling of basic services, not the substitution of underlying facilities in a carrier's network. ONA unbundling also does not mandate interconnection on carriers' premises of facilities owned by others.

Users must have access to BOC network functionalities if unbundling is to help effectively curb on BOC market power. Extending the availability of UNEs to users through ONA (or otherwise) would not impose any material additional costs on ILECs, since they are already required to provide UNEs to other carriers under Section 251. In some cases, access to Section 251 UNEs may not be sufficient. The Commission's basic approach should require (1) aggregated access functions and features on an unbundled basis, and (2) unbundled network functionalities and interconnection arrangements requested by non-carriers at economically rational rates. Giving non-carriers such access would have the additional benefit of aiding in the identification of market needs and developing services that meet those needs. Indeed, the Commission itself has acknowledged that "[a] major goal of ONA is to increase opportunities for [ISPs] to use the BOCs' regulated networks in highly efficient ways, enabling

[ISPs] to expand their markets for their present services and develop new service offerings as well, all to the benefit of consumers."²⁶

The Commission is being unrealistic and impractical in suggesting that "pure" ISPs can take advantage of Section 251 unbundling by partnering or teaming with competitive local exchange carriers ("CLECs"), or by becoming certified telecommunications carriers.²⁷ As noted above, to take advantage of Section 251's benefits, ISP customers must be customers of CLECs. Thus, "teaming" with CLECs means end-to-end integration. Basing ISP safeguards on end-to-end integration would be bad policy and would facilitate the sort of ILEC upstream leveraging discussed above.

And the Commission itself has observed that, "even when the BOCs face competition from alternate providers of basic services, they may still be able to charge unreasonable rates for terminating access."²⁸ And the daunting administrative and regulatory obligations (not to mention the expense) entailed in becoming a telecommunications carrier would not be worth the cost and effort if the primary motivation is to take advantage of Section 251. But more fundamentally, ISPs and pure end users should not be compelled to become carriers to have access to network functionalities and arrangements that would help satisfy market needs.

²⁶ *Computer III Remand Proceedings*, 5 FCC Rcd 7719 (1990) (subsequent history omitted) at 7720 (quoted in Further Notice at ¶ 78). The original statement referred to "ESPs" rather than "ISPs," but for all practical purposes, the two should be considered synonymous.

²⁷ Further Notice at ¶¶ 33, 95.

²⁸ Further Notice at note 148.

If a user requested access to an unbundled network element or arrangement that a BOC determined was too financially and technically infeasible to provide, the BOC would have an opportunity to refuse to provide the element or arrangement, but it would bear the burden of establishing that provision of the requested element is financially and technically infeasible. A suitable procedure and showing for this purpose might be similar to that devised in *Computer III*. That procedure gives a BOC 120 days from the date a request is made for a service to either provide the service or state specific reasons why it will not do so.²⁹ The BOC's determination is to be based on market-area demand, "utility as perceived by [the ISP]," and costing and technical feasibility.³⁰ Unlike the *Computer III* procedure, however, the requesting ISP or end user should not be forced to seek a declaratory ruling from the Commission if it finds the BOC's response to be inadequate; rather, the burden should be on the BOC to persuade the Commission (through the Common Carrier Bureau) that it should not be required to furnish the requested network element or arrangement. If the BOC's response is inadequate, the Commission should require the BOC to comply with the request.

C. Commission Precedent Supports Treating Customers and Carriers Equally.

Under decades of Commission precedent, customers have the right to use the public network in any way that is privately beneficial and not publicly

²⁹ *Computer III Remand Proceedings*, Report and Order, 4 FCC Rcd 7571 (1991) (subsequent history omitted) at 7654.

³⁰ *Id.*

harmful, *i.e.*, that does not cause technical harm to the network.³¹ In the *Hush-a-Phone* case, the Court of Appeals for the D.C. Circuit invalidated a Commission order approving AT&T and Bell System tariffs that prevented subscribers from connecting to their telephones any devices not furnished by the telephone company, so-called "foreign attachments."³² The Court disagreed with the Commission's and telephone companies' claims that the Hush-a-Phone (a small plastic cup that snapped over the mouthpiece to provide privacy and shut out external noise) harmed the network.³³ The Court concluded that the tariff restrictions against foreign attachments "are an unwarranted interference with the telephone subscriber's right reasonably to use his telephone in ways which are privately beneficial without being publicly detrimental."³⁴

The Commission applied the *Hush-a-Phone* rule in *Use of the Carterfone Device in Message Toll Telephone Service*,³⁵ where it found AT&T tariff provisions prohibiting the use of interconnection devices to be unreasonable and unduly discriminatory.³⁶ The Commission alluded to the benefits of allowing users to interconnect their own equipment with the network, stating³⁷ that

³¹ See, *e.g.*, *Hush-a-Phone Corporation v. United States*, 238 F.2d 266 (D.C. Cir. 1956).

³² *Hush-a-Phone*, *supra*, note 31, 238 F.2d at 265.

³³ *Id.*, 238 F.2d at 269.

³⁴ *Id.*

³⁵ 13 F.C.C.2d 420, *recon. denied*, 14 F.C.C.2d 571 (1968) ("*Carterfone*").

³⁶ *Id.*, 13 F.C.C.2d at 423-24.

³⁷ *Id.* at 424.

a customer desiring to use an interconnecting device to improve the utility to him of both the telephone system and a private radio system should be able to do so, so long as the interconnection does not adversely affect the telephone company's operations or the telephone system's utility for others.

Giving users access to Section 251-like UNEs would improve the utility to them of the network without adversely affecting the BOCs' operations or the network's utility for others.

The Common Carrier Bureau applied a different rationale in ordering Pacific Bell to sell Feature Group B ("FGB") access service to First Data Resources, an end user.³⁸ Rejecting Pacific Bell's claim that FGB access service was available only to carriers, and not end users, the Bureau wrote, "[I]nterstate access services should be made available on a non-discriminatory basis and, as far as possible, without distinction between end user and [interexchange carrier] customers."³⁹

As in *First Data*, the Commission should erase the distinction between carriers and end users with regard to Section 251-like access to UNEs, and give users access to unbundled elements in a manner comparable to that which Section 251 affords carriers. Moreover, the Commission should conclude that giving users access to Section 251-like unbundled network elements would be

³⁸ *Petition of First Data Resources, Inc. Regarding the Availability of Feature Group B Access Service to End Users*, 1986 FCC LEXIS 3347 (Com. Car. Bur., released May 28, 1986).

³⁹ *Id.* at *15 (citing *Investigation of Access and Divestiture Related Tariffs*, CC Dkt. No. 83-1145, Phase I, 97 F.C.C.2d 1082 (1984) at 1187 ("[I]n general, we seek to eliminate so far as possible differences in services and rates based on whether the customer is a carrier or end user For example, end users should be able to obtain access services offered to [interexchange carriers] if they wish, in addition to services expressly reserved for end users.")).

privately beneficial (indeed, probably publicly beneficial) without being publicly detrimental. Under the *Hush-a-Phone* rule, the Commission should give users access to UNEs, either by expanding ONA or otherwise.

III. THE COMMISSION SHOULD ALLOW THE MARKET (I.E., USERS), NOT JUST CARRIERS, TO IDENTIFY AND SATISFY SERVICE NEEDS.

The Commission has stated that it wants to "encourage the BOCs to provide new technologies and innovative information services . . . [and] to ensure that the BOCs will make their networks available for the use of competitive providers of such services."⁴⁰ While these goals are worthwhile, achievement of them alone will not go far enough toward promoting competition and identifying and satisfying users' needs. Experience shows that users' needs are best met when they are given access to network facilities and functionalities on par with that of carriers. Because incumbent carriers lack the incentive to innovate, it is critical to the introduction of new products and services that users be given carrier-like access to the network elements they need to develop new products and services. Thus, the Commission's focus in this proceeding should be more on users' needs and concerns and less on those of service providers.

One example of the benefits that could arise from giving users carrier-like access to UNEs relates to BOCs' claims that Internet traffic is creating network congestion. If ISPs were given greater access to unbundled network elements, they would be in the position to use those elements to identify and implement

⁴⁰ Further Notice at ¶ 7.

technical solutions to the claimed congestion problems. This is only a single example of the many ways in which users could use unbundled network elements to develop new products and services.

In *California III*, the Ninth Circuit found the Commission's cost-benefit analysis of ONA to be flawed.⁴¹ In this proceeding, the Commission should not only consider the benefits to the public of giving non-carriers access to unbundled network functionalities, but it should also consider the costs to the public of depriving users of access to network functionalities that they might need to develop new services that respond to market needs and increase competition beyond today's level.

CONCLUSION

For the foregoing reasons, the Commission should extend to users Section 251-like access to UNEs for use in providing interstate services. Such

⁴¹ *California III*, *supra*, note 13, 39 F.3d at 930.

an approach would encourage competition and the proliferation of new services that respond to users' needs without materially increasing BOCs' costs.

Respectfully submitted,

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Certificate of Service

I, Molly McEwan, hereby certify that true and correct copies of the preceding Comments of the Ad Hoc Telecommunications Users Committee in CC Docket Nos. 95-20 and 98-10 were served this 27th day of March, 1998 via hand delivery upon the following parties:

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